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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,511	04/30/2001	Lawrence J. Thomas	TCS-414.2P-US-1	4009

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EXAMINER

NGUYEN, DAVE TRONG

ARTICLE

PAPER NUMBER

1632

DATE MAILED 07/16/2002

Please find below and or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/845 511

Examiner

Dave Nguyen

Applicant(s)

THOMAS LAWRENCE J

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 17-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-945)
3. ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
4. ☐ Interview Summary (PTO-413) Paper No(s) _____
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Other detailed action

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Election/Restriction

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I. Claims 31-35, embracing prophylactic methods of using a plasmid-based vaccine of increasing the level of HDL, reducing the level of endogenous CETP, increasing antibodies to CETP, or treating any cardiovascular disease in a human or other animal in need of treatment thereof, classifiable in class 514, subclass 44.

Group II. Claims 31-35, embracing therapeutic methods of using a plasmid-based vaccine of treating any cardiovascular disease in a human or other animal in need of treatment thereof, classifiable in class 514, subclass 44.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Group I claims require a prophylactic effect and/or vaccine effect which is main technical feature for the use of the plasmid-based vaccine, whereas Group II claims are only directed to therapeutic treatment method of treating any existing cardiovascular disease in a human and any animal in need of the treatment.

Should Group I or II be elected, claims 1-30 will be examined together with the elected Group.

In addition, Should applicant elect Group I claims or Group II claims, claims 1-35 are generic to a plurality of disclosed patentably distinct species comprising:

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A specifically named broad range helper T cell epitope cited in the Markush group of claim 19, 24, or 29. The members cited for in the Markush group are structurally distinct and thus do not have unity of an invention. A search for any of the members of the Markush group does not necessarily overlap with that of another member in the group.

Should any of the above Groups and/or species as required be elected, the claims of the respective elected claimed invention are generic to a plurality of disclosed patentably distinct species comprising:

A specifically named nucleotide sequence as claimed in claim 32 or 33;

A specifically named nucleotide sequence as claimed in claim 34 or 35.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

Each of the species that is listed or claimed does not share a structural feature in common with respect to their site of action. Thus, the requirement of unity of the invention is not fulfilled.

Applicant is required to elect a particular group and species even though this requirement is traversed. Note that the species election must be complete in order for the examiner to conduct any meaningful search of the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because of the reasons given above, restriction for examination purposes as indicated is proper.

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particularly since it would be unduly burdensome for the examiner to search and/or consider patentability of all of the claims as presently pending.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications regarding the formalities should be directed to Patent Analyst Dianiece Jacobs, whose telephone number is **(703) 305-3388**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Dave Nguyen* whose telephone number is **(703) 305-2024**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Deborah Reynolds*, may be reached at **(703) 305-4051**.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center number is **(703) 305-7401**.

Any inquiry of a general nature or relating to the status of this application should be directed to the *Group receptionist* whose telephone number is **(703) 308-0196**.

Dave Nguyen
Primary Examiner
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DAVE NGUYEN
PRIMARY EXAMINER